

Ram Kishore Singh Vs. Uoi and Another

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Court : Delhi

Decided On : Jul-30-2012

Judge : Pradeep Nandrajog & Manmohan Singh

Appeal No. : W.P.(C) 1051 OF 2000

Appellant : Ram Kishore Singh

Respondent : Uoi and Another

Judgement :

PRADEEP NANDRAJOG, J.

1. We note the admitted facts. The petitioner and the respondents are not at variance that with effect from June 04, 1996, the petitioner proceeded on 30 days earned leave up to July 03, 1996 and thus had to re-join the 19th Bn. with which he was attached, on July 04, 1996, but while on leave he submitted an application for leave to be extended by 20 days which request was accepted and petitioner was sanctioned leave up to July 23, 1996; requiring him to join the battalion on July 24, 1996. He submitted another application seeking leave to be extended which request was denied as per letter dated July 23, 1996 addressed to the petitioner.

2. It is also not in dispute between the parties that the respondents issued an apprehension roll requiring the Superintendent of Police, Bhind; the place where the petitioner permanently resided, to apprehend and produce the petitioner.

Petitioner was apprehended and handed over to the BSF Academy Tekanpur on August 09, 1997, wherefrom on September 16, 1997, he was brought to the location where the 19th Bn. was stationed i.e. Jammu. Parties are also not at variance on the fact that on December 23, 1996 the petitioner was arrested in FIR No.60/96 pertaining to offences punishable under Section 302, 201, 120-B IPC and he was admitted to bail on April 03, 1997. On April 30, 1997, he informed said fact to the Commandant of his Battalion but in spite of being admitted to bail did not report to the Commandant of the Battalion.

3. The facts on which parties are at variance with respect to the aforesaid period i.e. when the petitioner proceeded on leave and till he was apprehended are that the petitioner claims having sent applications on various dates for leave to be extended on medical grounds and not all being accepted as received by the department, and in respect of which facts we need not trouble ourselves by noting the same in as much as said facts are irrelevant.

4. On being apprehended by the police and handed over to BSF Academy, Tekanpur on August 09, 1997 and brought to the battalion Headquarters at Jammu on September 16, 1997, the relevant record which has been produced before us evidences that the Commandant took cognizance of an offence report placed before him as per the requirement of Rule 43 of the BSF Rules 1969 pertaining to petitioner having committed an offence under Section 19(a) of the BSF Act 1968 i.e. absenting himself without leave. In the offence report it was noted that granted leave initially for 30 days which was extended by another 20 days and thus leave being sanctioned up to July 23, 1996, the petitioner absented himself without leave till he was apprehended by MP Police and handed over to BSF Academy Tekanpur on August 09, 1997 i.e. unauthorized absence for a period of 1 year and 16 days. The relevant record shows that after the Commandant took cognizance of the offence report, the petitioner was marched up to the Commandant at 11:00 hours on September 17, 1997 and after hearing the petitioner the Commandant decided that it was a fit case for Abstract of Evidence to be prepared as per Rule 45 and for which, as per the record, Asst.Comdt.Hoshiyar Singh was appointed as the officer to prepare the abstract of evidence and as per the requirement of Rule 45 a formal charge was drawn and

handed over to the petitioner. The charge reads as under:-

“The accused No.90001897 Constable Ram Kishor Singh “E” Coy of 19 Bn. BSF is charged with:-

BSF ACT 1968 SEC 19(b)

WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE GRANTED TO HIM

in that he, having been granted leave of absence from 4/6/96 to 23/7/96 failed without sufficient cause to rejoin at Bn HQ on the expiry of the said leave. He was handed over by SHO UMRI Distt Behind (MP) to BSF Academy Tekanpur on 9/8/97 in compliance to 19 Bn BSF letter No.Estt- I/Apprehension/19 Bn/96/2128-29 dtd 17/8/96.

Total period of absence - 1 year and 16 days.

Place : Indreshwar Nagar

Sd/-

(Jammu)

(K.S.SAMBYAL)

Dated, the 17 Sept 97

COMMANDANT

19 BN B.S.F.”

5. Dy.Comdt.Hoshiyar

Singh commenced recording evidence to prepare the Abstract of Evidence and held proceedings on September 20, 1997 and September 21, 1997. He recorded statements of three witnesses, and relevant would it be to note that all of them were witnesses of the department. 27 documents were proved and suffice would it be to state that of the relevant documents proved and exhibited were the ones which evidenced petitioner applying for leave and being sanctioned leave for 30 days; petitioner's application dated June 03, 1996 seeking leave to be extended resulting in an order being passed extending leave by 20 days; upon petitioner not joining when leave expired on July 23, 1996 he being informed on same date to report back immediately; a reminder sent to him on August 01, 1996; application submitted by the petitioner to the department on August 15, 1996 through post that he could not join being sick; letter written to the police on August 27, 1996 to apprehend the petitioner; letter dated October 11, 1996 written by the petitioner

informing the department that due to eye ailment he could not join; department's reply thereto on October 21, 1996 that petitioner must immediately join; two medical certificates dated October 23, 1996 and December 22, 1996 handed over by the petitioner, the former recording that the petitioner was suffering from jaundice and was under treatment from July 22, 1996 till October 23, 1996 and the latter that petitioner's treatment for jaundice continued from October 24, 1996 to December 22, 1996.

6. Considering the Abstract of Evidence, the Commandant decided that a trial was warranted and accordingly framed a charge, and as per the record the charge was framed on January 29, 1999 and handed over to the petitioner. The charge reads as under:-

"FIRST CHARGE BSF ACT SEC - 19 (b)	WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE GRANTED TO HIM In that he, At Bn. Hq, having been granted leave of absence from 4-6-1996 to 23-7- 1996, failed without sufficient cause to rejoin his duty on the expiry of said leave.
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SECOND CHARGE BSF ACT SEC - 19 (a)	ABSENTING HIMSELF WITHOUT LEAVE In that he, At Bhind, while on leave of absence from 4-6-1996 to 23-7-1996, having been arrested in connection with a criminal case on 23-12-1996 and released on bail from Civil Custody on 3-4-1997 failed to report to unit for duty and remained absent without leave from 3-4-1997 until he was taken into Police Custody and handed over to BSF Academy Tekanpur on 9-8- 1997.
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Dated : the 29th January 1999 Sd/-

S.K.WADHWA

COMMANDANT 19 BN.”

7. The next day i.e. January 30, 1999 the petitioner was marched before the Court and as per record the trial commenced at 16:00 hours. SI Shrinath Das was sworn as the interpreter, a fact recorded in the order sheet dated January 30, 1999. Shri P.R.Singh, Dy.Comdt. was present as a friend of the accused. It further stands recorded:-

“The charge sheet is read, translated and explained to the accused, Mark B-2, signed by the Court and attached to the proceedings.”

8. Thereafter it stands recorded that the petitioner was asked whether he pleads guilty or not guilty. The answer by the petitioner stands recorded that he pleads guilty. It further stands recorded thereafter:-

“The accused having pleaded guilty to both charges, the Court explains to the accused the meaning of charge to which he has pleaded guilty, and ascertains that the accused understands the nature of the charges to which he has pleaded guilty. The court also inform the accused the general effect of the plea and the difference in procedure which will be followed consequent to the said plea. The court having satisfied itself that the accused understands the charges and the effect of his plea of guilty, accepts and records the same. The provisions of rule 142(2) are complied with.”

9. It stands recorded that thereafter the Record of Evidence was read and explained to the petitioner and thereafter two questions were put to him. The two questions and the answers thereto are as under:-

“Q-1. Do you wish to make any statement in reference to the charge or in mitigation of the punishment?

A. The accused says that he shall be pardoned for his mistakes.

Q-2. Do you wish to call any witness as to character?

A. The accused says no.”

10. We have referred extensively to the record as above, for the reason we find that in the instant case virtually everything has been challenged.

11. It is firstly alleged that Rule 45A of the BSF Rules 1969 was not complied with. As noted by us herein above this assertion is incorrect inasmuch as we find from the record that on September 17, 1997 at 11:00 hours, taking cognizance of the offence report, the Commandant heard the petitioner before taking a decision that Abstract of Evidence be recorded.

12. It is secondly urged that Rule 63(4) was violated, in that four days time prior to trial was not granted to the petitioner.

13. As noted herein above on January 29, 1999 the charge, as required by Rule 53 was served upon the petitioner. The trial was before a Summary Security Force Court. Sub-rule 6 of Rule 63 reads as under:-

“The provisions of sub-rules(2) and (3) shall not apply in relation to a trial before a Summary Security Force Court and in relation to such a trial the period of four days referred to in sub-rule (4) shall be construed as twenty-four hours.”

14. We note that as per the petitioner he was only given 20 hours i.e. the time gap between charge-sheet being served and trial commencing was 20 hours, but this is a bald averment. It is not pleaded as to at what time petitioner was served the charge-sheet and at what time the trial commenced. We have already noted the record, as per which trial commenced at 16:00 hours on January 13, 1999. Unfortunately, the time at which the charge-sheet was served is not recorded, but we take on record the statement made by learned counsel for the respondent that charge-sheets are always served before noon.

15. It is then urged that Rule 157 of the BSF Rules 1969 was violated, in that, the petitioner had a right to engage the services of a legal practitioner and same was refused.

16. As noted by us above, at the trial the petitioner was represented by a friend of the accused, Dy.Comdt.P.R.Singh. It is not the case of the petitioner that he had wanted to engage a legal practitioner and same was refused.

17. It is then pleaded that Rule 138(2) of the BSF Rules was violated. It is pleaded that the charge was not explained to the petitioner and secondly the petitioner was not read out the charges separately.

18. As noted by us herein above in para 7, it stands recorded that when the trial commenced the charge was read out, translated and explained to the petitioner. Thus, the assertion to the contrary by the petitioner is incorrect. It is not the case of the petitioner that said recording in the proceedings is false. Law presumes that official acts are done lawfully unless it is proved to the contrary, and proof does not mean mere allegations or pleadings.

19. We only add that the petition is nothing but a legal draft by a counsel to challenge all and sundry with respect to every stage of the matter. Except for the issue pertaining to when the charge-sheet was served, for which there is no clear

evidence as per the record of the time when the charge-sheet was served, we find that each and every other assertion of fact is contrary to the record.

20. As regards the second limb of the argument predicated on Rule 138(2) of the BSF Rules 1969, it is true that the rule envisages each charge to be put separately to the accused, and in the instant case both charges have been put together.

21. But, it is settled law that a procedural violation would be immaterial if no prejudice is caused to the accused. There are no pleadings in the writ petition that prejudice was caused.

22. That apart, the substance of both charges i.e. the facts constituting the two charges are the same. The first charge is of failing to rejoin duty after expiry of the leave without sufficient cause and the second charge is of having failed to report for duty after petitioner was released on bail on April 03, 1997. The substance of both charges being overlapping, the question of any prejudice does not arise.

23. It is then urged that notwithstanding petitioner pleading guilty, it is the duty of the Court to satisfy itself, and so record, that the accused has understood the nature of the charge to which he pleads guilty as also the effect of the plea. The duty being as per sub-rule (2) of Rule 142. It is asserted that this duty was not discharged.

24. As are the other pleas, even this plea is contrary to the record inasmuch as, the record shows that after petitioner pleaded guilty, the Court recorded the extract which we have noted in para 8 above.

25. The next argument that even Rule 143(4) was violated is without any substance inasmuch as sub-rule (2) of Rule 143 requires that after the accused pleads guilty, if at all, the Court shall read the Abstract of Evidence and annex the same to the proceedings, which we note has been done. Subrule (4) of Rule 143 requires that if from the Record of Evidence it appears to the Court that the accused does not understand the effect of his plea of guilty, the Court should record a plea of not guilty and proceed with the trial.

26. In the instant case, after the petitioner pleaded guilty, and after the Court read out the Abstract of Evidence, and the Court recorded satisfaction that the accused understands the charge and its effect, we see no scope for an argument that the Court ought to have recorded the plea of not guilty.

27. Now, from the Abstract of Evidence, and even otherwise it is not in dispute that the petitioner had to join back duty on July 23, 1996. He did not do so. He became an accused for having committed an offence of murder. He never informed said fact i.e. of his being an accused. He was arrested on December 23, 1996. What was he doing from July 23, 1996 to December 23, 1996? The petitioner has not explained. It is apparent that the petitioner was evading arrest and he knew that if he joined the Unit the police would apprehend him. The petitioner was admitted to bail on April 03, 1997 and only thereafter on April 30, 1997 he informed said fact to the Commandant of the battalion. In between, as noted herein above the petitioner sent only two letters to the department, which were duly exhibited when Abstract of Evidence was prepared, the first being the letter dated August 15, 1996 and the second dated October 11, 1996, as per the former the petitioner informed his being sick and as per the latter his suffering from an eye ailment.

28. As we have noted in paragraph 5 above, during Abstract of Evidence proceedings two medical certificates dated October 23, 1996 and December 22, 1996 were exhibited and needless to state these certificates could not have been sent by the petitioner when he sent the two letters on August 15, 1996 and August 27, 1996. The medical certificates were obviously supplied by him sometimes after he was apprehended by the police.

29. Further, after he was admitted to bail on April 03, 1997, the petitioner never reported back to the Unit and continued to abscond. Apprehension Roll had to be issued and MP Police arrested the petitioner on August 09, 1997. The explanation of the petitioner that the persons who stood surety for him did not let him leave the village is a ruse for the reason the persons who stood surety for the petitioner were obviously his well wishers and they knew that the petitioner was a Constable in BSF. The petitioner could have easily told them the consequence of his not reporting back. He could have informed said fact to his superiors. He did not do

30.

30. The apparent reason for the petitioner not to join the Unit was his being an accused for the charge of having committed murder and he wanting to hide said fact from the department.

31. Learned counsel for the petitioner had expressly given up the challenge raised in the writ petition with respect to Rule 151 and Rule 161 of the BSF Rules, and thus we do not deal with the same.

32. The writ petition is dismissed but without there being any order as to costs.

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